



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/158806

PRELIMINARY RECITALS

Pursuant to a petition filed July 05, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services in regard to Child Care, a hearing was held on August 25, 2014, at Madison, Wisconsin.

The issue for determination is whether the agency erred in its calculation of a child care program overpayment in the amount of \$5,166.99.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Monica Johnson

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Dane County.
2. Petitioner was employed at [redacted] and [redacted], a qualified employer under the Child Care Program (CC). Petitioner was a beneficiary of CC benefits from 9/8/13 to 5/17/14.

3. Petitioner was employed at [REDACTED] [REDACTED] and [REDACTED] until 9/8/13. That position had been CC qualified employment.
4. Petitioner did not participate in an approved activity after that. She became employed at [REDACTED] [REDACTED] in February. That employment was cash paid directly to petitioner. The employer did not file a new hire report or report wages paid to petitioner.
5. The agency sent an overpayment notice on 7/1/14.
6. Petitioner filed this appeal.

DISCUSSION

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1m). Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g).

It makes no difference as to whether the overpayment was caused by the county agency or the client since the recovery of the overpayment is required, regardless of fault. Wis. Stat., §49.195(3), provides that the agency must determine if an overpayment has occurred under §49.155, and the agency must seek recovery of the overpayment. There is no exception for situations where the agency's error caused the overpayment. As with welfare programs such as Food Stamps and the former Aid to Families with Dependent Children, an overpayment must be recovered even if it was caused by agency error.

A person is eligible for W-2 CC only if the person is participating in an approved activity. *W-2 Manual* 15.2.0; see also, Wis. Stat § 49.155(1m)(a) (2009-10); Wis. Admin. Code § DCF 101.26(1) (November 2008); Wis. Admin. Code § DCF 201.04(5)(a)2.b. (September 2010); *Child Care Assistance Manual* 1.5.0. Qualified employment is an approved activity.

Petitioner's qualified employment at [REDACTED] [REDACTED] and [REDACTED] ended on 9/4/13. Thereafter, she was not employed and not participating in an approved activity. She then became employed working for cash at the [REDACTED] [REDACTED] in February 2014. But, employment is an approved activity only if the employer is a "qualified" employer. In order for an employer to be a qualified employer the employer must have a Worker's Compensation insurance policy for its employees, a federal employer ID number (FEIN), must file a state new hire report within 30 days of the start of employment, and the employer must report wages to Unemployment Insurance. *Child Care Assistance Manual* 1.5.3.1; *W-2 Manual* 15.2.0; See also Wis. Stat § 49.155(1m)(a) (2009-10); Wis. Admin. Code § DCF 101.26(1) (November 2008); Wis. Admin. Code § DCF 201.04(5)(a)2.b As noted in the above Findings of Fact, the employer did not report wages or file a new hire report. This was "off-the-books" work for cash payment. Therefore, it is not a qualified

employer. It follows that petitioner was not in an approved activity during the time of the overpayment. For this reason, the overpayment must be affirmed.

CONCLUSIONS OF LAW

The agency did not err in its calculation of the CC overpayment.

THEREFORE, it is ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 20th day of October, 2014

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 20, 2014.

Dane County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud